

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

WOLVERINE PRODUCTS, INC.,
a Michigan corporation,

Plaintiff,

vs.

Case No. 2006-2610-CZ

MOLD MASTERS, CO.,
a Michigan corporation,

Defendant.

OPINION AND ORDER

Defendant Mold Masters Company moves for a change of venue under MCR 2.223(A)(1).

I. BACKGROUND

Plaintiff Wolverine Products, Inc. filed this action on June 16, 2006 asserting it sold parts to defendant for which defendant has not paid. Plaintiff claims a balance due of \$64,418.

Accordingly, plaintiff's complaint apparently alleges Breach of Contract.

Defendant now moves for a change of venue.

II. ANALYSIS

When a defendant raises a challenge to venue under MCR 2.223(A)(1), the burden is on the plaintiff to establish the county chosen is a proper venue. *March v Walter L Couse & Co*, 179 Mich App 204; 445 NW2d 204 (1989).

MCL 600.1621 provides in pertinent part:

Except for actions provided for in sections 1605, 1611, 1615, and 1629,



venue is determined as follows:

(a) The county in which a defendant resides, has a place of business, or conducts business, or in which the registered office of a defendant corporation is located, is a proper county in which to commence and try an action.

The term "conducts business" should be interpreted in accordance with the term "doing business" and excludes acts which are merely incidental to the business in which the company is ordinarily engaged. *Saba v Gray*, 111 Mich App 304; 314 NW2d 597 (1981); see also *Chiarini v John Deere Co*, 184 Mich App 735; 458 NW2d 668 (1990). A plaintiff must show the defendant has some real presence such as might be shown by systematic or continuous business dealings inside the county. *Marposs Corp v Autocam Corp*, 183 Mich App 166; 454 NW2d 194 (1990).

In the instant matter, defendant is a corporation with its principal place of business and registered agent in Lapeer County. There is no evidence suggesting defendant maintains any agents, employees or offices in Macomb County.

Plaintiff has not proffered any evidence to suggest defendant advertised or otherwise solicited customers in Macomb County. There is no evidence demonstrating the contract was entered into in Macomb County or that defendant delivered any goods or performed any significant services in Macomb County. Defendant's visits and other contacts (telephone, letter and e-mails) do not necessarily rise to the level of systematic and continuous business dealings in Macomb County. The fact that the work was to be performed in Macomb County merely confirms plaintiff, not defendant, conducts business in Macomb County.

Therefore, plaintiff has failed to establish defendant had a real presence in Macomb County sufficient to warrant venue.

III. CONCLUSION

For the reasons set forth above, defendant Mold Masters Company's motion for change of venue is GRANTED under MCR 2.223(A)(1).

Accordingly, venue is transferred to Lapeer County. Plaintiff Wolverine Products, Inc. shall be responsible for costs of transfer. MCR 2.223(B)(1).

This Opinion and Order neither resolves the last pending claim in this matter nor closes the case. MCR 2.602(A)(3).

IT IS SO ORDERED.

EDWARD A. SERVITTO
CIRCUIT JUDGE

AUG 10 2006

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK

BY: [Signature] Court Clerk
EDWARD A. SERVITTO, JR., Circuit Court Judge

Date:

Cc: Neil Strefling, Attorneys for Plaintiff

Dennis Haley and Jennifer Jackson, Attorneys for Defendant